

BOARD OF APPEALS CASE NO. 5354	*	BEFORE THE
APPLICANT: James & Margaret Shusta	*	ZONING HEARING EXAMINER
REQUEST: Variance to allow existing dwelling and proposed porch, steps and patio within the required setback;	*	OF HARFORD COUNTY
100 Coreopsis Court, Bel Air	*	
HEARING DATE: July 23, 2003	*	Hearing Advertised
	*	Aegis: 5/21/03 & 5/28/03
	*	Record: 5/23/03 & 5/3/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, James E. and Margaret E. Shusta, are requesting a variance, pursuant to Section 267-36 B, Table V, and Section 267-23C(1)(a)(4) and (6) of the Harford County Code, to allow an existing dwelling to be less than the required 40' foot from the rear property line (39 feet existing), less than the required 30 feet for the deck and patio, and less than 24 feet for the steps (proposed 25 feet for the deck and patio and 22 feet for the steps) in an R2 District.

The subject parcel is located at 100 Coreopsis Court, in the Third Election District, and is more particularly identified on Tax Map 49, Grid Number 4B, Parcel 875, Lot 45, in the East Gate subdivision. The parcel contains 11,282 square feet more or less.

The Applicant, James Shusta, appeared and testified that is the owner of the subject property. He indicated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. The witness described his property as a pie-shaped lot, located at the end of a cul-de-sac. The dwelling is set back 39 feet from the front property line, four feet further than the required 35 foot front yard setback. Mr. Shusta indicated that there are large drain and utility easements on the back, and on both sides of the property, making it impractical to construct an addition on either side of the dwelling. The property is improved by a two-story single family dwelling, with an attached two-car garage, covered concrete front porch, and a concrete driveway. There is an existing solid board privacy fence along the rear property line, and a split rail fence along both side yards. The rear yard also contains a children's swing and play structure.

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The witness indicated that he is proposing to construct a 22 foot by 14 foot screen porch within the required 30 foot rear yard setback, with steps exiting on the right of the porch and patio to the right of the screen porch. The proposed porch will not be located within any of the existing drainage easements. Mr. Shusta, testified that the outside of the proposed screen porch will be constructed on top a deck, and that the outside wall will be 25 feet from the setback line at its closest point. The proposed steps will be 22 feet from the property line at the closest point. The Applicant testified that because the builder located the existing dwelling 39 feet from the rear property line, he needs a one foot variance to bring the dwelling into compliance with Code requirements.

He also indicated that the proposed screen porch will be over 50 feet from the closest dwelling. The witness also stated that there are many similar screened porches within his neighborhood, and that the proposed porch will be compatible with both the existing dwelling, and with neighboring properties. According to Mr. Shusta, the granting of the requested variance will have no adverse impact on adjacent properties. He testified that he has spoken with all of his closest neighbors, and that none of them have expressed any opposition to either the subject application, or the proposed improvements.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department of Planning and Zoning recommended approval of the subject request in its June 9, 2003 Staff Report. He indicated that the Department found the subject property to be unique, because it is at the end of a cul-de-sac, the lot is much shallower than others within the same neighborhood, and the subject dwelling is set back four feet further than the required setback. Mr. McClune indicated that decks and patios, such as that proposed by the Applicants, are common within the East Gate neighborhood, and stated that the proposed construction will be compatible with other homes in the neighborhood. The witness testified that the proposed screen porch will have no adverse on neighboring properties because it will be 75 to 80 feet from the nearest dwelling.

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Mr. McClune also stated that, because of the shape of the lot, and the placement of the existing dwelling behind the setback line, the Applicants could not build a porch compatible with others in the neighborhood without the granting of the requested variance.

No witnesses appeared in opposition to the requested variance.

CONCLUSION

The Applicants, James E. and Margaret E. Shusta, are requesting a variance, pursuant to Section 267-36 B, Table V, and Section 267-23C(1)(a)(4)(6) of the Harford County Code, to allow an existing dwelling to be less than the required 40 foot from the rear property line (39 feet existing, less than the required 30 feet for the deck and patio, and less than 24 feet for the steps) proposed 25 feet for the deck and patio and 22 feet for the steps) in an R2 District.

Section 267-36B, Table V, of the Harford County Code requires a minimum 40 foot rear yard setback.

Section 267-23C(1)(a)(4) & (6) of the Harford County Code provide that:

“Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:..

[4] Uncovered stairs or necessary landings: six (6) feet...

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

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The existing dwelling is located 39 feet from the rear property line. The Applicants are therefore requesting a variance of approximately one foot to bring the dwelling into compliance with Code requirements. Because decks are allowed to extend to within 30 feet of the rear property line, the Applicants need only a five foot variance for the proposed screen porch, and a two foot variance for the proposed steps.

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is unique, the hearing examiner may proceed to the second prong of the test, and make a determination as to whether literal enforcement of the zoning ordinance with regard to the property would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The property is a pie-shaped lot located at the end of a cul-de-sac. The lot is shallower than other properties in the development, and is much narrower in the front than in the rear. The existing dwelling was built four feet behind the required front yard setback, and large drain and utility easements along both side property lines make it impossible to construct a screen porch on the side of the dwelling.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code in this case would result in practical difficulty for the Applicants. If the requested variance is not granted, the Applicants will be unable to construct a screen porch on their dwelling, and would therefore be denied property rights commonly enjoyed by other homeowners in their neighborhood.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. The proposed construction will be 50 to 75 feet from the closest dwelling. There are numerous similar screen porches located within the Applicants' neighborhood. The screen porch will be compatible not only with the existing dwelling, but also with other properties in the neighborhood. The Hearing Examiner accepts the Applicant's testimony, that he has spoken with all of his adjacent neighbors, none of whom have any opposition to the subject application. In addition, the Hearing Examiner accepts the findings of the Department of Planning and Zoning, as verified by the aerial photograph (Staff Report Attachment 8), that the lots adjacent to the rear of the subject property contain large mature trees, which will screen the proposed construction.

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The Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setbacks than the distances requested herein.

Date August 19, 2003

Rebecca A. Bryant
Zoning Hearing Examiner